

FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

GLOBAL BANKCARD SERVICES, INC.)	
)	
Plaintiff)	
)	
v.)	
)	
GLOBAL MERCHANT SERVICES, INC.)	
)	
Defendant.)	
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)	
GLOBAL MERCHANT SERVICES, INC.)	
)	
Counterclaim and Third-Party)	
Plaintiff,)	
)	Civil Action No. 1:11-cv-110 TSE-1DD
v.)	
)	
GLOBAL BANKCARD SERVICES, INC.)	
)	
Counterclaim Defendant,)	
)	
and)	
)	
GLOBAL MERCHANT SERVICES INC. t/a)	
GLOBAL DATA SERVICES and)	
YONG CHEOL KIM)	
)	
Third-Party Defendants.)	
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**COUNTERCLAIM/THIRD PARTY DEFENDANTS’ ANSWER TO SECOND
AMENDED COUNTERCLAIMS AND THIRD PARTY CLAIMS**

Plaintiff and Counterclaim Defendant Global Bank Card Services, Inc. (“GBS”), Third
Party Defendant Global Merchant Services, Inc., d/b/a Global Data Services (“GDS”) and Third
Party Defendant, Yong Cheol Kim (“Kim”) (collectively the “Counterclaim/Third Party

Defendants”), by and through counsel hereby respond to the Second Amended Counterclaims and Third Party Claims of Global Merchant Services, Inc. (the “Complaint”) filed by Defendant, Counterclaim Plaintiff and Third Party Plaintiff, Global Merchant Services, Inc. (“GMS”) and for their answers and affirmative defenses state as follows:

1. GBS, GDS and Kim lack sufficient information to neither admit nor deny the allegations contained in paragraph 1 of the Complaint.
2. GBS, GDS and Kim respond to the allegations contained in paragraph 2 of the Complaint and state that the documents referenced therein speak for themselves.
3. GBS, GDS and Kim admit the allegations contained in paragraph 3 of the Complaint.
4. GBS, GDS and Kim deny the allegations contained in paragraph 4 of the Complaint.
5. GBS, GDS and Kim admit the allegations contained in paragraph 5 of the Complaint.
6. GBS, GDS and Kim lack sufficient information to neither admit nor deny the allegations contained in paragraphs 6, 7 and 8 of the Complaint.
7. GBS, GDS and Kim deny the allegations contained in paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 of the Complaint.

**Count I – Breach of Contract
(Kim and GBS)**

8. Defendants Kim and GBS respond to the allegations contained in paragraph 23 of the Complaint and state that no response is required as those allegations have previously been answered.
9. Defendants Kim and GBS deny the allegations contained in paragraphs 24 and 25 of the Complaint.

**Count II – Fraud
(Dismissed by Order Dated June 7, 2011)**

**Count III – Conversion
(Kim and GBS)**

10. Defendants Kim and GBS respond to the allegations contained in paragraph 26 of the Complaint and state that no response is required as those allegations have previously been answered.

11. Defendants Kim and GBS deny the allegations contained in paragraphs 27 and 28 of the Complaint.

**Count IV – Unfair Competition
(Kim, GDS and GBS)**

12. Defendants Kim, GDS and GBS respond to the allegations contained in paragraph 29 of the Complaint and state that no response is required as those allegations have previously been answered.

13. Defendants Kim, GDS and GBS deny the allegations contained in paragraphs 30 and 31 of the Complaint.

**Count V – Unlawful Designation of Origin – Lanham Act
(Kim, GDS and GBS)**

14. Defendants Kim, GDS and GBS respond to the allegations contained in paragraph 32 of the Complaint and state that no response is required as those allegations have previously been answered.

15. Defendants Kim, GDS and GBS deny the allegations contained in paragraphs 33 and 34 of the Complaint.

**Count VI – Tortious Interference with Contract
(Kim, GDS and GBS)**

16. Defendants Kim, GDS and GBS respond to the allegations contained in paragraph 35 of the Complaint and state that no response is required as those allegations have previously been answered.

17. Defendants Kim, GDS and GBS deny the allegations contained in paragraphs 36 and 37 of the Complaint.

**Count VII – Violation of Virginia Uniform Trade Secrets Act
(Kim, GDS and GBS)**

18. Defendants Kim, GDS and GBS respond to the allegations contained in paragraph 38 of the Complaint and state that no response is required as those allegations have previously been answered.

19. Defendants Kim, GDS and GBS deny the allegations contained in paragraphs 39, 40, 41 and 42 of the Complaint.

**Count VIII – Combination to Injure GMS's Business
in Violation of VA Code § 18.2-500
(Kim, GDS and GBS)**

20. Defendants Kim, GDS and GBS respond to the allegations contained in paragraph 43 of the Complaint and state that no response is required as those allegations have previously been answered.

21. Defendants Kim and GMSI deny the allegations contained in paragraphs 44, 45, 46 and 47 of the Complaint.

**COUNT IX – Violation of Virginia Computer Crimes Act
(Kim)**

22. Defendant Kim responds to the allegations contained in paragraph 48 of the Complaint and states that no response is required as those allegations have previously been answered.
23. Defendant Kim denies the allegations contained in paragraphs 44, 45, 46 and 47 of the Complaint.

**COUNT X – Violation of Computer Fraud and Abuse Act
(Kim, GDS and GBS)
(Dismissed by Order Dated June 7, 2011)**

24. Any allegation contained in the Complaint which has not been expressly admitted, and for which a response is otherwise required by Kim, GDS and/or GBS is hereby denied.

Affirmative Defenses

Counterclaim/Third Party Complaint Defendants Kim, GDS and GBS aver that the Plaintiff's claims are barred and/or lessened by the following affirmative defenses:

1. Failure to state a claim upon which relief may be granted.
2. The relief requested is barred by unclean hands.
3. The relief requested is barred by waiver.
4. The relief requested is barred by estoppel.
5. The relief requested is barred by the Statute of Frauds.

Counterclaim/Third Party Complaint Defendants reserve the right to assert any additional affirmative defenses learned in discovery, at trial or by any other means.

WHEREFORE the Counterclaim/Third Party Defendants respectfully request that the Second Amended Counterclaims and Third Party Claims filed by GMS be dismissed, and for such other and further relief as is deemed just and proper.

Respectfully submitted,

**GLOBAL BANKCARD SERVICES, INC.
GLOBAL MERCHANT SERVICES, INC.
t/a GLOBAL DATA SERVICES,
f/k/a GLOBAL BANKCARD SERVICES, AND
YONG CHEOL KIM**

By Counsel:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July, 2011, a copy of the forgoing Counterclaim/Third Party Defendants' Answer was served by U.S. mail to the extent not served electronically upon the following:

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Respectfully Submitted,

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